

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WHITEPAGES, INC., a Delaware  
corporation,

Plaintiff,

v.

BEENVERIFIED, INC., a Delaware  
corporation,

Defendant.

Case No. 2:16-cv-529

COMPLAINT

**INTRODUCTION**

By this Complaint, pursuant to 28 U.S.C. § 2201, Plaintiff Whitepages, Inc. (“Whitepages”) seeks declaratory relief, as set forth below, to establish that its website, and specifically the progression of its people and public-records searches, does not violate any copyright or trade dress rights of Defendant BeenVerified, Inc. (“BeenVerified”). Whitepages also seeks relief for BeenVerified’s breach of its marketplace participation agreement with Whitepages.

**PARTIES**

1. Whitepages is a Delaware corporation with its principal place of business at 1301 5th Avenue, Seattle, Washington 98101. Founded in 1997, Whitepages is a leading provider of caller identification and other personal and business contact data in North America.

2. Upon information and belief, BeenVerified is a Delaware corporation with its

principal place of business in New York, New York. Upon information and belief, BeenVerified is a provider of online background-check and public-records search tools.

### JURISDICTION AND VENUE

3. This Court has original subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a) as it arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1051 *et seq.*, insofar as Whitepages seeks a declaration, pursuant to 28 U.S.C. § 2201, that its website does not infringe any copyright or trade dress rights of BeenVerified.

4. This Court has supplemental jurisdiction over Whitepages's related state law claim of breach of contract under 28 U.S.C. § 1367(a) because this claim is sufficiently factually related to the request for declaratory judgment of non-infringement such that it forms a part of the same case or controversy.

5. This Court has personal jurisdiction over BeenVerified because BeenVerified engaged in extensive contacts with Whitepages in this judicial district. This dispute arises from BeenVerified's failure to satisfy its contractual obligations to Whitepages, such that BeenVerified has injured Whitepages, who resides in this judicial district. In addition, BeenVerified's allegations of copyright and/or trade dress infringement by Whitepages were directed at Whitepages, who resides in this judicial district.

6. Venue is proper in this Court under 28 U.S.C. § 1391 because Whitepages maintains its principal operations in Seattle, Washington, a substantial part of the events or omissions giving rise to Whitepages's claims occurred in this judicial district, and BeenVerified is subject to the Court's personal jurisdiction in this judicial district.

### FACTS

#### A. The Whitepages-BeenVerified Marketplace Participation Agreement

7. Whitepages is a leading provider of caller identification and other contact information in North America, developing web and mobile phone/app-based services that help people find personal and business identities. Through its network of websites and applications

1 (the “Whitepages Network”), Whitepages offers, among other things, access to more than 250  
2 million personal identities.

3 8. Whitepages established a marketplace bidding program several years ago to allow  
4 third parties the ability to advertise on the Whitepages Network. Whitepages subsequently  
5 entered into marketplace participation agreements with various companies whereby such parties  
6 would bid on and purchase advertising space from Whitepages.

7 9. In July 2012, Whitepages entered into a marketplace participation agreement (the  
8 “Agreement”) with BeenVerified, a provider of online background-check and public-records  
9 search tools, whereby Whitepages agreed to display advertisements for BeenVerified on the  
10 Whitepages Network and BeenVerified agreed to pay Whitepages for such advertising.

11 10. In November and December 2015, Whitepages displayed advertising of  
12 BeenVerified on the Whitepages Network as requested by BeenVerified pursuant to the  
13 Agreement.

14 11. Whitepages issued an invoice dated November 30, 2015, to BeenVerified in the  
15 amount of \$559,771.41 for advertising provided by Whitepages to BeenVerified in November  
16 2015 under the Agreement. Attached hereto as **Exhibit A** is a true and correct copy of the  
17 invoice issued by Whitepages to BeenVerified for services provided in November 2015.

18 12. Whitepages issued an invoice dated December 31, 2015, to BeenVerified in the  
19 amount of \$137,763.71 for advertising provided by Whitepages to BeenVerified in December  
20 2015 under the Agreement. Attached hereto as **Exhibit B** is a true and correct copy of the  
21 invoice issued by Whitepages to BeenVerified for services provided in December 2015.

22 13. Under the Agreement, BeenVerified agreed to pay Whitepages all invoiced  
23 amounts due within thirty (30) days of each invoice date.

24 14. Under the Agreement, BeenVerified agreed to pay interest on late payments at the  
25 rate of 1.5% per month, or the highest rate permitted by law, whichever is less, beginning thirty  
26 (30) days after the invoice date.

27 15. Under the Agreement, BeenVerified agreed that it would reimburse Whitepages

1 for all of Whitepages's costs arising from collecting undisputed past due amounts owed by  
2 BeenVerified to Whitepages, including reasonable attorneys' fees.

3 16. Despite Whitepages's repeated efforts to contact BeenVerified regarding payment  
4 of the outstanding invoices for November and December 2015, those invoices remain unpaid as  
5 of the filing of this Complaint.

6 17. The Agreement provides that if BeenVerified fails to provide written notice of its  
7 intent to dispute an invoice within ninety (90) days of invoicing, BeenVerified waives any and  
8 all right to dispute such invoice.

9 18. To date, BeenVerified has not disputed either the November or the December  
10 invoice.

11 **B. BeenVerified's Allegations of Copyright and Trade Dress Infringement**

12 19. Whitepages has been operating its primary website, www.whitepages.com (the  
13 "Whitepages Website"), continuously for more than 15 years and is well recognized in the online  
14 records search industry.

15 20. The Whitepages Website has for some time offered both people and public-  
16 records search tools to its subscribers. These tools are core elements of the Whitepages's  
17 offering.

18 21. In December 2015, Whitepages informed BeenVerified that it would be  
19 materially reducing the availability of its marketplace bidding program, which Whitepages has  
20 the right to do in its sole discretion.

21 22. In or about early December 2015, while the November 2015 invoice had been  
22 issued and was pending and around the time Whitepages informed BeenVerified that it was  
23 scaling back the marketplace bidding program, BeenVerified contacted Whitepages stating that  
24 BeenVerified was "pausing" its bids under Whitepages's program because Whitepages was  
25 allegedly "plagiarizing and copying" the "flows" of BeenVerified's website.

26 23. In a subsequent communication in mid-December 2015, BeenVerified threatened  
27 to file a lawsuit against Whitepages for, in part, claims under the Lanham Act and for copyright

1 infringement.

2 24. After additional communications between the parties, Whitepages believed the  
3 allegations had been resolved but on or about February 25, 2016, Whitepages received a letter  
4 from counsel for BeenVerified again alleging that Whitepages had copied BeenVerified's  
5 "original materials and trade dress." Attached hereto as **Exhibit C** is a true and correct copy of  
6 the letter dated February 25, 2016, from BeenVerified's counsel to Whitepages.

7 25. In the February 2016 letter, BeenVerified alleged that the "progression" of  
8 Whitepages's people and public records searches was "identical to that of the original and  
9 proprietary progression of such searches" on BeenVerified's website. BeenVerified's letter  
10 further alleged that the "trade dress" of BeenVerified's website had been "wholly replicated" by  
11 Whitepages.

12 26. BeenVerified further claimed that consumers had come to "distinctly associate"  
13 the "look and feel" of its website with BeenVerified, and that the "platform, graphics, and search  
14 progression" on its website constituted an "original and creative work." BeenVerified also stated  
15 that it had filed to register the copyright in its "original and creative work".

16 27. BeenVerified further claimed that Whitepages's alleged copying of the "look and  
17 feel" and "search progression" of BeenVerified's website violated (unspecified) federal and state  
18 laws.

19 28. BeenVerified's allegations of copyright and/or trade dress infringement appear to  
20 be nothing more than a thinly veiled attempt to avoid paying Whitepages the amounts past due  
21 under the Agreement, BeenVerified no longer having an incentive to pay such amounts in a  
22 timely fashion in light of the fact that its advertising relationship with Whitepages is ending.

## 23 CAUSES OF ACTION

### 24 FIRST CLAIM FOR RELIEF

#### 25 BREACH OF CONTRACT

26 29. Whitepages incorporates by reference all of the allegations set forth in paragraphs  
27 1 through 28 above.

1 30. BeenVerified entered into a binding contract with Whitepages when it executed  
2 the Agreement.

3 31. Under the Agreement, BeenVerified agreed to pay Whitepages for the advertising  
4 displayed by Whitepages on the Whitepages Network on behalf of BeenVerified within thirty  
5 (30) days of the invoice dates.

6 32. Whitepages displayed advertisements on the Whitepages Network on behalf of  
7 BeenVerified pursuant to the Agreement, and otherwise fully performed all of its obligations  
8 under the Agreement.

9 33. Whitepages timely issued (on December 9, 2015 and January 11, 2016,  
10 respectively) invoices to BeenVerified for advertising services provided to BeenVerified under  
11 the Agreement in November and December 2015.

12 34. Both invoices are overdue. Having failed to pay the amounts due under the  
13 invoices for services rendered to BeenVerified in November and December 2015, BeenVerified  
14 failed to perform its payment obligations under the Agreement and is in material breach of its  
15 contract with Whitepages.

16 35. Whitepages has incurred, and continues to incur, costs in attempting to collect the  
17 monies owed by BeenVerified pursuant to the Agreement.

18 36. As a direct and proximate result of BeenVerified's failure to perform its payment  
19 obligations under the Agreement, Whitepages has suffered damages in an amount to be proven at  
20 trial, currently believed to be at least \$697,535.12.

21 37. By reason of the foregoing, BeenVerified is liable to Whitepages for: (a) damages  
22 of not less than \$697,535.12; and (b) prejudgment interest as well as collection costs and  
23 reasonable attorneys' fees pursuant to the Agreement.

24 **SECOND CLAIM FOR RELIEF**

25 **DECLARATORY JUDGMENT – 28 U.S.C. § 2201 *et seq.* and 17 U.S.C. § 101 *et seq.***

26 **NON-INFRINGEMENT OF COPYRIGHT**

27 38. Whitepages incorporates by reference all of the allegations set forth in paragraphs

1 through 37 above.

39. There is a real and actual controversy between Whitepages and BeenVerified regarding whether the “look and feel” of BeenVerified’s website and/or BeenVerified’s “search progression” is subject to protection under the Copyright Act and, if so, whether Whitepages infringed any of BeenVerified’s alleged copyrights. The existence of this actual justiciable controversy is demonstrated, in part, by BeenVerified’s allegation that Whitepages has violated federal and state laws and its threat to file a lawsuit against Whitepages for, among other things, violations of the Copyright Act and the Lanham Act.

40. The “look and feel” or overall formatting and layout of BeenVerified’s website and/or its “search progression” is not entitled to copyright protection and therefore any purported copying of the unprotectable “look and feel” or “search progression” of BeenVerified’s website does not constitute copyright infringement as a matter of law.

41. BeenVerified has not sufficiently demonstrated and cannot demonstrate that Whitepages has copied any protectable elements of BeenVerified’s website and therefore cannot show that Whitepages has engaged in any actionable copyright infringement.

42. As a result, Whitepages is entitled to a declaratory judgment that the Whitepages Website, including the search progression contained therein, does not infringe any valid copyright of BeenVerified.

### **THIRD CLAIM FOR RELIEF**

#### **DECLARATORY JUDGMENT – 28 U.S.C. § 2201 *et seq.* and 15 U.S.C. § 1051 *et seq.***

#### **NON-INFRINGEMENT OF TRADE DRESS**

43. Whitepages incorporates by reference all of the allegations set forth in paragraphs 1 through 42 above

44. There is a real and actual controversy between Whitepages and BeenVerified regarding whether the “look and feel” of BeenVerified’s website and/or search progression is entitled to trade dress protection and, if so, whether Whitepages has infringed any alleged trade dress rights BeenVerified claims to possess. The existence of this actual justiciable controversy

1 is demonstrated, in part, by BeenVerified's allegation that Whitepages has violated federal and  
2 state laws and its threat to file a lawsuit against Whitepages for, among other things, violations of  
3 the Copyright Act and the Lanham Act.

4 45. The elements of the "look and feel" of BeenVerified's website and its search  
5 progression which BeenVerified alleges Whitepages copied do not comprise protectable trade  
6 dress under the Lanham Act or other applicable law.

7 46. The elements of the "look and feel" of BeenVerified's website that BeenVerified  
8 alleges comprises its purported trade dress—e.g., "gray/taupe toned backgrounds with green  
9 highlights throughout," "the placement and color of the search box and buttons," "the translucent  
10 logos of partners directly beneath the search box," and "an indication of the number of searches  
11 within a white rectangle directly beneath" the search box—are not distinctive of BeenVerified's  
12 website and indeed are similar to any number of other websites in the people search space.

13 47. As a result of the lack of distinctiveness of the "look and feel" of BeenVerified's  
14 website, BeenVerified cannot demonstrate that any alleged use of the elements of that "look and  
15 feel" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation,  
16 connection, or association of Whitepages with BeenVerified or as to the origin, sponsorship, or  
17 approval of Whitepages's goods, services, or commercial activities by BeenVerified.

18 48. In addition, BeenVerified's "search progression" is a functional element for  
19 which no trade dress protection is afforded.

20 49. Therefore, the "look and feel" of BeenVerified's website and/or its "search  
21 progression" are not entitled to trade dress protection and thus any purported copying of the  
22 unprotectable "look and feel" or "search progression" of BeenVerified's website does not  
23 constitute trade dress infringement as a matter of law.

24 50. As a result, Whitepages is entitled to a declaratory judgment that the Whitepages  
25 Website, including the search progression contained therein, does not infringe any valid trade  
26 dress of BeenVerified.



**PRAYER FOR RELIEF**

WHEREFORE, Whitepages respectfully requests that judgment be entered in its favor and against BeenVerified, and award the following relief:

1. Actual damages for the total outstanding amount due to Whitepages from BeenVerified under the Agreement;
2. Interest for late payment of the amounts due as provided under the parties' Agreement;
3. A declaration that the Whitepages Website, including the search progression contained therein, does not infringe upon any valid copyright of BeenVerified;
4. A declaration that the Whitepages Website, including the search progression contained therein, does not infringe upon any valid trade dress rights of BeenVerified, including under the Lanham Act, 15 U.S.C. § 1125;
5. An award to Whitepages of its costs of suit and reasonable attorneys' fees under the parties' Agreement and as otherwise may be permitted by law; and
6. Such other, further, and different relief as the Court deems proper under the circumstances.

Dated this 13th day of April, 2016.

Respectfully Submitted,

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